UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Curt Hébert, Jr., Chairman;
William L. Massey, and Linda Breathitt.

California Independent System Operator Corporation	Docket No. ER01-889-004
California Power Exchange Corporation	Docket No. ER01-902-003
San Diego Gas & Electric Company, Complainant, v.	
	Docket No. EL00-95-032
	Docket No. EL00-98-031
Sellers of Energy and Ancillary Services	Docket No. EL00-104-005
Into Markets Operated by the California	Docket No. EL00-107-006
Independent System Operator and the	Docket No. EL01-1-006
California Power Exchange, Respondents, et al.	

ORDER DENYING REHEARING OF
CALIFORNIA ISO CREDITWORTHINESS ORDER

(Issued June 13, 2001)

In this order, we deny a request for rehearing of the Commission's order on creditworthiness issued April 6, 2001 (April 6 Order).[1] The April 6 Order granted a motion filed by a group of California generators (California Generators)[2] to require the

[1]California Independent System Operator Corporation, et al., 95 FERC ¶ 61,026 (2001).

[2]This group includes: Dynegy Power Marketing, Inc.; Mirant Delta, LLC and Mirant Potrero, LLC; Reliant Energy Power Generation, Inc.; El Segundo Power LLC, Long Beach Generation LLC, Cabrillo Power I LLC, and Cabrillo Power II LLC; Duke Energy North America and Duke Energy Trading and Marketing LLC; and Williams Energy Marketing and Trading Company.

California Independent System Operator Corporation (ISO) to comply with the Commission's order on creditworthiness issued February 14, 2001 (February 14 Order).[3]

I. Background

On January 4, 2001, the ISO filed a proposed tariff amendment to waive the creditworthiness requirement for Southern California Edison Company (SoCal Edison) and Pacific Gas and Electric Company (PG&E) for a period not to extend past March 3, 2001. The ISO intended to terminate the creditworthiness exemption as soon as it could act on guidance from the Commission.[4] The ISO tariff imposes a creditworthiness requirement on utility distribution companies (UDCs), Scheduling Coordinators, and Metered Subsystems (MSSs). Under that requirement, SoCal Edison and PG&E, as both Scheduling Coordinators and UDCs, must either maintain an Approved Credit Rating or post security in an amount sufficient to cover their outstanding liability for transactions through the ISO-controlled grid. The ISO proposed the tariff amendment in response to indications that SoCal Edison and PG&E were about to have their credit ratings downgraded to a level below that which the ISO tariff recognized as "Approved," and were also unable to post security in the amount required by the tariff. The ISO acted out of concern that, under such circumstances, the existing tariff would bar PG&E and SoCal Edison from scheduling transactions and participating in the ISO markets.

The February 14 Order authorized the ISO to waive the existing creditworthiness requirement insofar as applied to SoCal Edison and PG&E accessing their own transmission facilities to deliver their resources to their loads (self-supplying).[5] The February 14 Order barred the ISO from waiving this requirement in the case of transactions involving third-party suppliers. The February 14 Order provided, however, that the Commission would allow the ISO to excuse SoCal Edison and PG&E from posting security for third-party transactions if appropriate substitute credit-support

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[3]California Independent System Operator Corporation, et al., 94 FERC ¶ 61,132 (2001).

[4]ISO January 4, 2001 filing in Docket No. ER01-889-000, et al., (ISO Transmittal Letter) at 4.

[5]Pursuant to our December 15, 2000 order, effective January 1, 2001, PG&E, SoCal Edison, and San Diego Gas & Electric Company were required to self-supply, instead of selling their generation to the California Power Exchange Corporation (PX) and then buying it back. San Diego Gas & Electric Company, et al., 93 FERC ¶ 61,294 (2000), reh'g pending.

arrangements were made for those transactions. Noting that the California Department of Water Resources (DWR) had begun making purchases on behalf of SoCal Edison and PG&E in the forward markets,[6] the February 14 Order indicated that an agreement by DWR or a state bond to back those utilities' liabilities for third-party-supplied power could substitute for SoCal Edison and PG&E posting security.

On February 22, 2001, the California Generators filed a motion to compel, arguing that the ISO was incorrectly interpreting the February 14 Order as applying only to scheduled transactions and not transactions made in real time (i.e., transactions in the Imbalance Energy market or in response to emergency dispatch orders). The April 6 Order granted the California Generators' motion and directed the ISO to ensure the presence of a creditworthy counterparty for all power that third-party suppliers provide to PG&E and SoCal Edison, including power provided through real-time transactions.[7]

II. Instant Rehearing Requests

On May 7, 2001, requests for rehearing of the April 6 Order were separately filed by the ISO, the California Electricity Oversight Board (Oversight Board), and the Public Utilities Commission of the State of California (collectively, Petitioners).[8]

According to Petitioners, the existing creditworthiness provisions in the ISO tariff simply describe the conditions under which a Scheduling Coordinator loses its right to

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[6]On January 17, 2001, the Governor of California issued an emergency proclamation giving DWR authority to enter into arrangements to purchase power in order to mitigate the effects of electrical shortages in the State. Proclamation, Cal. Gov. (Jan. 17, 2001). The California Legislature has since passed legislation authorizing and appropriating funds for such purchases. See S.B. 7 and A.B. 1, 2001-2002 Legis., 1st Ex. Sess. (Cal.) (to be codified at CAL. WATER CODE § 200).

[7]Two of the California Generators--Duke Energy North America, LLC and Duke Energy Trading and Marketing, LLC--filed a motion on March 16, 2001, seeking clarification/rehearing of whether the February 14 Order addressed real-time transactions. The April 6 Order renders that motion moot. Also, PG&E filed a motion on March 16, 2001, seeking clarification/rehearing of the effect of the February 14 Order on its liability for power supplied to it by third parties since it lost its Approved Credit Rating. We will address that motion in a separate order.

[8]The ISO has also made a compliance filing in response to the April 6 Order, which we will address in a separate order.

submit schedules, and the Commission recognized this in its February 14 Order. Petitioners then use this interpretation of the ISO tariff and the February 14 Order to support two arguments for rehearing. First, Petitioners argue that rehearing is warranted because the April 6 Order required changes to the ISO tariff that could only be ordered through a proceeding under section 206, rather than section 205, of the Federal Power Act (FPA).[9] Second, Petitioners argue that rehearing is warranted because the April 6 Order is inconsistent with the February 14 Order and is not the result of reasoned decision-making.

Additionally, the Oversight Board states that had it known that the February 14 Order extended to unscheduled transactions, it would have filed for rehearing, but now judicial review "may be delayed indefinitely in violation of parties' due process rights."[10] Also, the ISO argues that the April 6 Order violates the FPA by improperly placing the interests of suppliers over the public interest of maintaining electric service to consumers.

On May 22, 2001, answers to Petitioners' requests were filed by PG&E, Williams Energy Marketing & Trading Company, and the Northern California Power Agency.

On May 24, 2001, the State of California, through the State Attorney General (State), filed a motion to intervene out of time.

III. Discussion

A. Procedural Matters

Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2000), generally prohibits an answer to a rehearing request. We are not persuaded to allow the answers to Petitioners' requests, and accordingly will reject them.

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[9] Section 205 of the FPA, among other things, governs cases where a public utility has filed a proposed amendment to its own tariff. See 16 U.S.C. § 824d (1994). Section 206 of the FPA, on the other hand, governs the revision of a tariff in response to a complaint or upon a Commission motion, and necessitates a finding that the tariff provision being revised is unjust, unreasonable, or unduly discriminatory or preferential. 16 U.S.C. § 824e (1994).

[10] Oversight Board rehearing request at 5 n.3 and n. 4.

In its motion, the State asserts that granting it intervention will pose no prejudice given "the early stage of the proceeding."[11] However, the State's motion, the first it has filed in this proceeding, appears sixteen weeks after the ISO first filed its amendment, ten weeks after the February 14 Order was issued, nine weeks after the California Generators filed their motion to compel, seven weeks after the April 6 Order was issued, and two weeks after the deadline for seeking rehearing of the April 6 Order. Moreover, the State offers no explanation of its failure to file earlier in this proceeding. Therefore, pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2000), we deny the State's motion to intervene out of time.[12]

B. ISO Tariff Creditworthiness Requirement

In its original January 4 filing, the ISO did not indicate that it considered either the existing creditworthiness requirement or its amendment to be limited to the issue of scheduling. Instead, the ISO explained that the amendment was intended to allow PG&E and SoCal Edison to "continue to schedule transactions and participate in the ISO's markets without providing one of specified forms of security."[13] The ISO also acknowledged that the creditworthiness provisions in its tariff "were the product of intensive negotiations" and were intended "to provide Market Participants with the financial security that they consider necessary in order to operate in California markets."[14] The ISO did not suggest that it considered the creditworthiness requirement as a means of ensuring financial security in only some of its markets, specifically its Day-Ahead and Hour-Ahead markets, but not in its real-time Imbalance Energy market. Nevertheless, in the instant pleadings, the ISO and the other Petitioners seeking rehearing now characterize the creditworthiness provisions in the ISO tariff as having nothing whatsoever to do with real-time transactions. The Petitioners argue that section 2.2.7.3

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[11] State motion at 8.

[12] See The Power Company of America, L.P. v. FERC, 245 F.3d 839, 843 (D.C. Cir. 2001) (upholding FERC's denial of late intervention for failure to establish good cause for delay); Southern Company Services, Inc., 92 FERC ¶ 61,167 at 61,565 (2000) (allowing intervention after issuance of an order in order to challenge that order, would result in unjustified delay and disruption of proceeding and undue burden on other parties); ISO New England, Inc., 94 FERC ¶ 61,237 at 61,845 n. 2 (2001) (denying intervention after issuance of order "consistent with Commission precedent").

[13] ISO Transmittal Letter at 1 (emphasis added).

[14] Id. at 3.

of the ISO tariff provides that the only effect of a Scheduling Coordinator, UDC, or MSS not meeting the creditworthiness requirement is that such an entity would not have its schedules accepted by the ISO. The plain language, as well as the logic, of the ISO tariff, however, contradict Petitioners' reading.

Section 2.2.3.2 of the ISO tariff states:

> Each Scheduling Coordinator, UDC or MSS shall either maintain an Approved Credit Rating (which may differ for different types of transactions with the ISO) or provide in favor of the ISO one of the following forms of security for an amount to be determined by the Scheduling Coordinator, UDC or MSS and notified to the ISO under Section 2.2.7.3.

Section 2.2.3.2 then lists six types of acceptable security, including an irrevocable and unconditional letter of credit, and an irrevocable and unconditional guarantee by a company with an Approved Credit Rating. This language is not limited to the effect of creditworthiness on scheduling rights. It is an unqualified, affirmative requirement that UDCs without an Approved Credit Rating must post security.[15]

The ISO tariff then explicitly links the "Security Amount" posted by a UDC without an Approved Credit Rating to the UDC's liability for Imbalance Energy, i.e., power supplied in real time.[16] Section 2.2.7.3 states:

> the ISO Security Amount is intended to cover the entity's outstanding liability for either (i) Grid Management Charge; and/or (ii) Imbalance Energy, Ancillary Services, Grid Operations Charge, Wheeling Access Charge, High Voltage Access Charge, Transition Charge, and Usage Charges. (Emphasis added.)

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[15]The UDCs have entered into UDC Operating Agreements with the ISO, and, in section 3.2 of those agreements, the UDCs have agreed to comply with the ISO tariff. Similarly, the Scheduling Coordinators have entered into Scheduling Coordinator Agreements with the ISO, and in section 2 of those agreements, the Scheduling Coordinators have agreed to comply with the ISO tariff.

[16]Sections 11.2.4.1, 11.2.4.1.1, and 11.2.4.2.1 of the ISO tariff specify that UDCs, through their Scheduling Coordinators, are liable when power is provided in real time.

Section 2.2.7.5 provides that the ISO may increase the Security Amount if the party's "liability for Imbalance Energy is determined by the ISO to be excessive by comparison with the likely cost of the amount of Energy scheduled." Thus, the plain language of the ISO tariff requires that UDCs without an Approved Credit Rating must post security in an amount sufficient to cover their liability for unscheduled transactions.

Moreover, Petitioners' interpretation of the ISO tariff turns the whole logic of a creditworthiness requirement on its head. The ISO itself has admitted that market participants considered the creditworthiness requirement essential in their negotiations over the original ISO tariff. Yet, as the California Generators pointed out in their motion to compel,[17] under the ISO's current interpretation of this requirement, suppliers would be provided assurances of payment when they engage in voluntary transactions with UDCs (and least need such assurances), but not when they are required to provide power under emergency dispatch orders (and most need assurances).

Therefore, we reject Petitioners' interpretation of the ISO tariff creditworthiness requirement and again conclude, as we did in the April 6 Order, that it does entitle third-party suppliers to credit protection for both scheduled and unscheduled transactions. The ISO's amendment would have eliminated this protection from its tariff for the two largest buyers in its markets. The result, as we explained in the February 14 Order, would have been an inappropriate unilateral shifting of unacceptable financial risks to both large and small third-party suppliers. We also concluded that acceptance of the amendment could increase prices paid by consumers, because suppliers would likely charge the UDCs a higher risk premium as part of their bid price to supply energy to them. Finally, we noted that the amendment could disproportionately affect small municipal customers, due to the inequalities of having different creditworthiness standards for two sizes of purchasers. Thus, we rejected the ISO amendment as applied to all transactions with third-party suppliers.

We reject the argument that the April 6 Order required amendments to the tariff beyond those sought by the ISO. Petitioners note that the only explicit limitation that the tariff imposes upon the ISO in the event that a Scheduling Coordinator, UDC, or MSS fails to meet the creditworthiness requirement is that the ISO cannot accept schedules offered by that party. Petitioners then argue that the Commission is imposing new limitations on the ISO's emergency dispatch authority. We disagree

[17] California Generators' motion in Docket No. ER01-889-002, et al. at 8.

Recognizing that application of the existing tariff provision on loss of scheduling rights would result in blackouts for PG&E and SoCal Edison's customers, the ISO filed a proposed tariff amendment to exempt SoCal Edison and PG&E from the creditworthiness requirement. However, the ISO explicitly sought the Commission's guidance on how to address the problem of PG&E's and SoCal Edison's loss of creditworthiness. The ISO characterized its proposal as a temporary measure to expire no later than March 3, 2001, or be replaced with a new tariff amendment that incorporated our guidance. We rejected the ISO's proposed amendment as unjust and unreasonable for the reasons discussed above. Yet we shared the ISO's concern about the potential for increased blackouts unless some action were taken. Therefore, we did offer guidance, per the ISO's request, as to how the ISO could revise its proposed amendment so that it would be acceptable for filing, and as to the conditions under which we would excuse the ISO's failure to comply with its existing tariff. However, we did not substitute any amendments for the one filed by the ISO.

In particular, contrary to the interpretation of Petitioners, our April 6 Order did not direct the ISO tariff to be amended to excuse suppliers from complying with ISO emergency dispatch orders whenever they believe that a UDC is not creditworthy. The ISO tariff does not allow suppliers to ignore emergency dispatch orders. We also find nothing unjust or unreasonable in providing that suppliers must comply with ISO emergency dispatch orders while enforcing their right to credit assurance by filing complaints with the Commission, rather than by ignoring ISO orders issued in the middle of the emergency.

Also, Petitioners are incorrect that the April 6 Order added a new provision to the ISO tariff barring the ISO from issuing emergency dispatch orders whenever a UDC or Scheduling Coordinator fails to meet the creditworthiness standard. In no way did the April 6 Order restrict the ISO's pre-existing authority to issue emergency dispatch orders. However, we reject Petitioners' interpretation of the tariff provision requiring the ISO to reject schedules from noncreditworthy buyers as an implicit license to ignore the explicit creditworthiness requirement for unscheduled transactions. The existing ISO tariff imposes a duty upon the ISO to enforce the creditworthiness standard. The April 6 Order merely provided that this duty continues with regard to power supplied by third parties, notwithstanding our acceptance of the ISO's waiver of the creditworthiness requirement for SoCal Edison's and PG&E's self-supplying. In sum, the ISO has no less authority to issue dispatch orders but also no greater authority to disregard its creditworthiness requirements, except for self-supplying as noted.

With regard to the arguments that the April 6 Order was inconsistent with the February 14 Order and not the result of reasoned decision-making, we conclude that the

two orders are not only consistent, but, in fact, the reasoning in the February 14 Order dictated the result in the April 6 Order. As noted above, the February 14 Order rejected the ISO's proposed tariff amendment to the extent it affected third-party suppliers on the ground that it "entail[ed] an inappropriate unilateral shifting of unacceptable financial risks" to suppliers that sell into the California market.[18] If a waiver of the creditworthiness standard as applied to voluntary scheduled transactions is an inappropriate shifting of unacceptable financial risks, then so, too, is such a waiver as applied to involuntary transactions.

The February 14 Order does, as noted by Petitioners, include the statement:

> Under our order, the ISO can continue to accept the UDCs' schedules to supply their load with their own resources, and DWR's authority to purchase on behalf of the UDCs is acceptable. Thus, the unresolved creditworthiness issues relate to the UDCs' residual load that is served through the ISO's imbalance energy market.[19]

While perhaps not the most artful expression of our intent, this statement was simply meant to reflect that while DWR was already making forward purchases for SoCal Edison and PG&E, it had not yet agreed to back the cost of power supplied to those UDCs in real time. Thus, "the unresolved creditworthiness issues" concerned how to ensure creditworthiness for real-time transactions rather than whether to do so.

With regard to the Oversight Board's argument that it has been deprived of due process, we note that it has had a full opportunity to voice its concerns not only in this stage of the proceeding but also during the original consideration of the California Generators' motion.

Finally, we reject the argument that we are not acting in the public interest. The ISO argues that if it is required to enforce the creditworthiness standard for real-time power supplied to PG&E and SoCalEdison, and no one steps forward to serve as a creditworthy counterparty for those utilities, then it will be forced to institute blackouts. The ISO further argues that it is inappropriate to place a higher priority on assuring that suppliers of electricity receive payment than on continuity of service. We are faced with extraordinary circumstances. Market participants originally envisioned that UDCs

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[18] February 14 Order at 61,510.

[19] Id. at 61,511.

would, through the PX as their Scheduling Coordinator, provide the ISO in advance with balanced schedules covering their entire load rather, than relying on real-time transactions.[20] Also, market participants originally assumed that the UDCs would be capable of availing themselves of the option of posting security if their credit ratings fell. Now, however, the lack of creditworthiness on the part of PG&E and SoCal Edison, previously the two largest buyers in the ISO markets, has become a continuous problem. In addition, the PX, which operated a day-ahead and hour-ahead market, has suspended operations. Meanwhile, demand is sometimes surpassing supply, and emergency dispatch orders have become routine.

The current circumstances pose difficult choices, and force us to weigh both short-term and long-term effects that cannot be precisely predicted. Generators who wish to make transactions through the ISO-controlled grid must sign a Participating Generator Agreement by which they agree to be bound by the terms of the ISO tariff, including the requirement to comply with ISO emergency dispatch orders.[21] Meanwhile, PG&E and SoCal Edison have made clear they cannot pay for the power that is being supplied to them through emergency dispatch orders, and, to date, no one else has committed to cover the cost of that power.[22] Excusing the ISO from enforcing creditworthiness standards for real-time transactions with PG&E and SoCal Edison may produce limited short-term benefits for certain consumers. However, in the long term, it is crucial to maintain market rules that provide suppliers with adequate incentives to continue to provide power and to build new supply.[23] Thus, we conclude that any short-term benefits of excusing the ISO from enforcing creditworthiness standards will quickly be outweighed by the long-term adverse effects on the market and ultimately on the public as a whole.

In summary, it would be unreasonable to limit the ISO's creditworthiness enforcement duties to rejecting schedules from noncreditworthy parties. We also

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[20] See, e.g., ISO tariff § 2.2.7.2 ("A Scheduling Coordinator shall submit to the ISO only Balanced Schedules in the Day-Ahead Market and the Hour-Ahead Market.").

[21] Participating Generator Agreement § 4.2.

[22] See PG&E's March 16, 2001 filing in Docket No. ER01-889-001; SoCal Edison's March 22, 2001 filing in Docket No. ER01-889-003.

[23] See San Diego Gas & Electric Company, et al., 95 FERC ¶ 61,226 (2001) (concerning complaints by qualifying facilities that lack of payment by SoCal Edison and PG&E is forcing them to stop supplying electricity).

conclude that it would be reasonable to require that the ISO obtain prior assurances of payment for all third-party power supplied to SoCal Edison and PG&E, whether directly or through purchases by DWR (or another creditworthy counterparty) on their loads' behalf. Therefore, we conclude that we acted reasonably and within our authority under FPA section 205 in issuing the February 14 and April 6 Orders.[24]

The Commission orders:

(A) The requests for rehearing are denied, as discussed in the body of this order.

(B) The State's motion to intervene out of time is denied, as discussed in the body of this order.

By the Commission. Commissioner Massey concurred with a separate statement attached.

(S E A L)

David P. Boergers,
Secretary.

[24] See, e.g., Sea Robin Pipeline Co. v. FERC, 795 F.2d 182, 183 (D.C. Cir. 1986) (under Natural Gas Act analog to FPA § 205, Commission may reject or accept utility's tariff filing in whole or in part, so long as it does not substitute rates of its own design). The directives in the February 14 and April 6 Orders would also be equally appropriate and justified if Petitioners were correct that we could only take this action under FPA section 206. See id. at 184; see also Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1955).

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(Issued June 13, 2001)

MASSEY, Commissioner, concurring:

In my concurrence to our earlier order, I expressed concern that a strict application of the ISO's creditworthiness standards may prevent the California ISO from performing its fundamental task of keeping the system in balance and thereby maintaining the reliability of the grid.[25] Today, I am relying on the clear, unambiguous statement in this order that the "ISO tariff does not allow suppliers to ignore emergency dispatch orders." As I construe this, the ISO may issue whatever dispatch orders are necessary to maintain grid reliability, and the ISO tariff requires suppliers to comply without exception. This substantially resolves my earlier concerns.

I concur with today's order.

William L. Massey
Commissioner

[25] 95 FERC at 61,081.